



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,394	02/15/2001	Marc Eller	12179-P081P1	2998

29444 7590 09/05/2006

WINSTEAD SECHREST & MINICK P.C.
PO BOX 50784
DALLAS, TX 75201

EXAMINER

SALCE, JASON P

ART UNIT PAPER NUMBER

2623

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Interview Summary	Application No. 09/784,394	Applicant(s) ELLER ET AL.	
	Examiner Jason P. Salce	Art Unit 2623	

All participants (applicant, applicant's representative, PTO personnel):

(1) Kelly K. Kordzik. (3) _____.

(2) Jason Salce. (4) _____.

Date of Interview: 24 August 2006.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.
If Yes, brief description: _____.

Claim(s) discussed: None.

Identification of prior art discussed: None.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.


Examiner's signature, if required

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant's representative contacted the examiner regarding the dismissal of the appeal brief regarding rule 37 CFR 41.37(which describes the new requirements for submitting an Appeal Brief). As previously explained by the examiner in section (d) "If appellant does not file an ammended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed". However, Appellant argued that the MPEP at section 1205.03 which states that the examiner should not require a corrected brief for minor non-compliance in an appeal brief, where minor non-compliance could be related to the absence of a claim set and that because a claim set could be provided by the examiner so could the decision rendered by the board. After consulting with the examiner's supervisor it was concluded that from a customer service standpoint the Appellant's arguments were persuasive. The examiner's supervisor instructed the examiner to withdraw the dismissal and enter the examiner's answer previously submitted. Therefore, the examiner has withdrawn the previous dismissal of the appeal brief and further provided the examiner's answer in addition to the decision rendered by the board (for case 09/553,012) to supplement the related board decisions appendix.